THE FIRM OF T.AR.CT. v. THE FIRM OF SV.KR.

[P. C. (Lord Morton of Henryton, Lord Somervell of Harrow and Mr. L. M. D. de Silva) November 11, 1954]

[Privy Council Appeal No. 31 of 1953]

Agency — Contract — Money borrowed — Thavannai letters — Discharge of debt by payment to agent.

This was an appeal from the decision of the Court of Appeal of the Federation of Malaya (reported in (1952) M.L.J. 198). The plaintiffs in this case claimed repayment with interest of a loan for $3,000 dated 16th September 1941. The defendants alleged that the loan with interest was repaid to one Annamalai Chettiar on the 25th June 1943. The plaintiffs in a reply alleged that Annamalai was not authorised to receive money or give valid receipts on their behalf. The learned trial judge and by a majority the Court of Appeal decided that Annamalai Chettiar had ostensible authority and that the claim therefore failed. The issue in the appeal was whether Annamalai Chettiar had actual or ostensible authority.

Held: the authority to part with the firm's money which was admittedly given to Annamalai Chettiar necessarily implied in the circumstances of the case authority to receive repayment and therefore Annamalai Chettiar was authorised to receive the repayment for the plaintiffs.

PRIVY COUNCIL APPEAL, appeal from the judgment of the Court of Appeal, Federation of Malaya, (1952) M.L.J. 198.

F. Gahan, Q.C. (*N. N. McKinnon* with him) for the appellants.

Gerald Gardiner, Q.C. (*James Comyn* with him) for the respondents.

Cur. Adv. Vult.

The judgment of the Lords of the Judicial Committee of the Privy Council was delivered by:—

Lord Somervell of Harrow: — This is an appeal by the plaintiffs from a decision of the Court of Appeal at Penang. The plaintiffs claim repayment with interest of a loan for $3,000 dated 16th September, 1941. The defendants allege that the loan with interest was repaid to one Annamalai Chettiar on the 25th June, 1943. The plaintiffs in a reply allege that Annamalai was not authorised to receive money or give valid receipts on their behalf. The learned Judge and, by a majority, the Court of Appeal, decided that Annamalai had ostensible authority and the claim therefore failed. The issue in the appeal is whether he had either actual or ostensible authority.

The plaintiffs are an Indian chettiar firm who carry on business in Penang. There is another and larger Indian chettiar firm referred to as O.R.M. and these two firms were associates in business in Penang. Some of the business was carried on by and solely in the name of O.R.M., the plaintiffs having a share in the profits. This case is concerned with another part of the business, namely loans on Thavannai letters. Such loans are made out of moneys of relatives and are made only to other chettiars. The Thavannai letter is in form a receipt with an undertaking to pay addressed to the lending firm and sometimes giving the name of the relative whose money is being lent. When the loan is repaid the borrower is entitled to receive the letter back. The fund of relative's money, though there was in this case no separate bank account, is referred to as the charity fund.

Prior to and at the time of the loan now under consideration the plaintiffs' agent in Penang under a power of attorney was one Arunasalam. Annamalai held a power of attorney from O.R.M. In 1933, at a time when the plaintiffs had their own agent in Penang, they wrote to the then agent of O.R.M. asking him to invest on Thavannai letters their charity fund. The original of that letter was destroyed in the war and secondary evidence to the above effect was given by Annamalai. That authority was continued and was operative at the time of the loan, Annamalai having become agent for O.R.M. at a date subsequent to the original letter.

In September, 1941, the manager of the defendants, also a chettiar firm, approached Annamalai for a loan on Thavannai letters. The evidence as to the office arrangements is not very clear. A number of chettiars carried on business at 140, Penang Street. The plaintiffs and O.R.M. each had a box, presumably in one room or in proximity. Annamalai agreed to lend $5,000, and either on that occasion or shortly after produced two draft Thavannai letters for signature and a cheque for $5,000. One Thavannai letter covering $2,000 related to O.R.M.'s charity fund, the other to the plaintiffs. It read as follows:—

SV.KR. Penang Impressed Stamp 31 cts.
T.AR.CT.

Penang.
31st day of the month of Avani, visu year (16.9.41).

Sithambaram hereby writes: Received from you $3,000/- on current date. We have credited this three thousand dollars in the name of T.AR.CT. Charity Fund Trust through you from current date at 5/16% interest, i.e. interest rate at 3/32% over and above the rate of interest ruling for the Penang three months "Thavannai" (account). We hereby agree to pay the principal and interest to your order at Penang on due date and get back this letter endorsed.

(Sgd.) Sithambaram Chettiar attorney of S.V.K.R.

The cheque for the whole $5,000 was signed by Arunasalam as attorney for the plaintiffs. This cheque, though drawn on the plaintiffs' account, covered the $2,000 from O.R.M.'s charity fund. The defendants in their books opened separate accounts for the $3,000 and the $2,000. War with Japan broke out on 8th December, 1941. On the 11th December, Arunasalam was killed in an air raid and the offices at 140, Penang Street were hit. Annamalai carried on

the business of the plaintiffs and O.R.M. The $5,000 with interest was repaid to him by June, 1943.

It should be made clear that there is no suggestion of any misappropriation or dishonesty on the part of Annamalai or O.R.M. If the loan was not in law discharged it will be advantageous to the plaintiffs to recover the amount of it in these proceedings.

On the facts and documents as stated their Lordships agree with the trial Judge that it was the duty of the defendants to repay this money to the plaintiffs or to an agent of that firm with authority to receive the money on their behalf. Was Annamalai such an agent?

The appellants rely on the fact that the plaintiffs had until his death their own attorney, Arunasalam. He and he alone could draw on their banking account and as they say receive money and sign a receipt. On the other hand the authority of Annamalai to invest the charity fund involved authority to demand cheques on the plaintiffs' banking account as and when required. That he had such authority and that Arunasalam carried out his instructions is clear from the evidence. The proposition contended for is that the agent authorised to part with the firms' money on loan to A. B or C had no authority to receive repayment on their behalf. Their Lordships cannot accept this. In their opinion the authority to invest on loan necessarily implies in the circumstances of this case authority to receive repayment.

No doubt if and when Arunasalam was in the office he would as attorney ordinarily sign documents that required signature on behalf of the plaintiffs. Suppose before the war he had been ill or on a holiday at a time when principal or interest on a loan made under Annamalai's authority was tendered for repayment to Annamalai. It would seem to their Lordships somewhat absurd to suggest that he would have had to tell the borrower to wait till Arunasalam had recovered if the borrower wanted a discharge. If Annamalai would have had such authority before the war it was not suggested that the position would have been different after Arunasalam's death.

The plaintiffs called no evidence as to the position at the relevant dates. If a copy of the letter to which we have referred existed it was not produced. One has to proceed on the contents of that letter as deposed to by Annamalai. Annamalai signed the endorsement on the Thavannai letter when the loan was repaid, "Agent of O.R.M. for T.AR.CT." This wording was relied on by the appellants in the argument as to ostensible authority. On the view their Lordships take of his actual authority it follows precisely the authority given by the letter. It was as agent of O.R.M. that he was authorised to make loans out of the charity fund and it would therefore be as such agent that he would be authorised to receive their repayment "for" the plaintiffs.

It is unnecessary in these circumstances to consider whether if there had not been actual authority the defendants could establish ostensible authority. There was no dispute between the parties as to the applicable law and no useful purpose would be served by considering how that law would have been applied if the facts had been other than their Lordships find them to be.

Their Lordships are of opinion that the conclusion of the Court of Appeal is right and they will humbly advise Her Majesty that this appeal ought to be dismissed. The appellants will pay the costs of the respondents.

Appeal dismissed.

Solicitors: *Lawrence Messer & Co.; Shelton Cobb & Co.*

LOKE THAM CHUAN v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) February 11, 1954]

[Ipoh — Criminal Appeal No. 138 of 1953]

Dangerous Drugs Ordinance, 1952, s. 30(2) and (7) — Meaning of "owner" — Meaning of "possession."

This was an appeal against the forfeiture of a motor car under s. 30(2) of the Dangerous Drugs Ordinance. One Ong Hock Thye had pleaded guilty to a charge of possession of opium. The facts showed that the opium was concealed in a compartment which had been constructed under the rear seat of the car. The car was registered in the name of the appellant and the insurance policy was also in his name. The car had been lent by the appellant to Ong Hock Thye on the understanding that he was to return the car at the end of 14 days if he was not able to dispose of it. After the conviction of Ong Hock Thye proceedings were taken with regard to the disposal of the car and the appellant was given opportunity of showing cause why the vehicle should not be forfeited. The learned President at the hearing held that Ong Hock Thye was the owner of the motor car for the purpose of s. 30(2) of the Dangerous Drugs Ordinance and ordered that the car be forfeited to Government. On appeal it was argued that the learned President was wrong in his interpretation of s. 30(2) and (7) of the Dangerous Drugs Ordinance.

Held: (1) on the facts the relationship between the appellant and Ong Hock Thye was that of a gratuitous bailment revocable at the will of the bailor and therefore the appellant who was the bailor had the right to immediate possession of the motor car; (2) as the appellant has the right to possess the car he was the person entitled to possession and therefore the owner of the motor car for the purpose of s. 30 of the Dangerous Drugs Ordinance; (3) as there was evidence to show that the offence was committed by Ong Hock Thye without the knowledge, consent or connivance of the appellant the provision of